Qwest®

4250 NORTH FAIRFAX DRIVE, ARLINGTON, VIRGINIA 22203, TEL: 703.363.0220

DOCKET FILE COPY ORIGINAL

May 3, 1999

By Hand Delivery

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
The Portals
445 12th St., SW, TWA-325
Washington, DC 20554

Re: Further Notice of Proposed Rulemaking In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, CC Docket No. 94-129

Dear Ms. Salas:

Attached for filing in the referenced docket, and on behalf of Qwest Communications Corporation ("Qwest"), are the original and four copies of Qwest's reply comments.

We have forwarded a 3.5" diskette containing the reply comments in WordPerfect 5.1 format to Ms. Kimberly Parker of the Common Carrier Bureau. Also, we have forwarded a paper copy and a 3.5" diskette containing the comments to International Transcription Services.

Kindly date-stamp the additional copy of this letter and return it to the awaiting messenger. If you have any questions, please contact me.

Respectfully submitted,

Jane Kunka
Manager, Public Policy

Enclosures

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Subscriber Carrier	)	
Selection Changes Provisions of the	)	
Telecommunications Act of 1996	)	CC Docket No. 94-129
	)	
Policies and Rules Concerning	)	
Unauthorized Changes of Consumers	)	
Long Distance Carriers	)	

REPLY COMMENTS OF QWEST COMMUNICATIONS CORPORATION

Jane Kunka
Manager, Public Policy –
Regulatory and Legislative Affairs
Qwest Communications Corporation
4250 North Fairfax Drive
Arlington, VA 22203
(703) 363-0220

Genevieve Morelli
Senior Vice President of Government
Affairs and Senior Associate General
Counsel
Qwest Communications Corporation
4250 North Fairfax Drive
Arlington, VA 22203
(703) 363-0220

May 3, 1999

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EXECUTIVE SUMMARY

In its initial comments, Qwest applauded the Commission for implementing bold, new anti-slamming measures in its *Second Report and Order,* but warned that these new rules should be given a chance to work before the Commission imposes another layer of requirements designed to protect consumers from unauthorized carrier changes. None of the comments filed by the other parties has convinced us to change our position. In addition to failing to show that more restrictive rules are needed, supporters of the Commission's proposals have failed to provide clear and convincing evidence that the *FNPRM's* proposed new rules will, if adopted, effectively curtail incidents of slamming.

As explained in further detail below, Qwest continues to believe that there is no indication that the Commission's new slamming rules require additional reinforcement at this time. Specifically, there is no need to adopt restrictions governing the use of Internet Letters of Agency. The Internet provides a safe, reliable and effective way for customers to change carriers, and there is no evidence whatsoever that the use of the Internet has contributed to the slamming problem. Similarly, we see no reason to restrict the use of three-way calling and automated systems to effectuate third party verifications of carrier change requests. We also do not see a need to regulate the content of verification scripts. Positions to the contrary fail to take into account the needs of carriers and consumers to engage in a flexible process to effectuate carrier changes, and should therefore be rejected.

Underlying a number of the *FNPRM's* other proposals -- including its effort to identify and curtail incidents of soft slamming, and its proposed reporting and registration requirements -- is the notion that both carriers and consumers alike would best be served

if an independent, neutral third party administrator was established to oversee and effectuate all carrier changes and freezes. Such an entity would ensure that all carrier change requests are dealt with uniformly and fairly, and would go a long way toward leveling the playing field for all carriers. Qwest supports the concept of a neutral third party administrator.

The *Second Report and Order* established a new framework to remove the profit from engaging in the practice of slamming. This was an important step in the fight against unauthorized carrier changes. The provisions of the *Second Report and Order* should be given a chance to work, however, before the Commission dilutes them unnecessarily with more restrictive, and possibly less effective anti-slamming measures.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Subscriber Carrier	)	
Selection Changes Provisions of the	)	
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	)	
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Unauthorized Changes of Consumers	)	
Long Distance Carriers	)	

REPLY COMMENTS OF QWEST COMMUNICATIONS CORPORATION

Qwest Communications Corporation ("Qwest") hereby responds to the comments filed in response to the Federal Communication Commission's ("FCC's" or "Commission's") *Further Notice of Proposed Rulemaking* in the above-referenced proceeding.[1]

INTRODUCTION AND SUMMARY

In its initial comments, Qwest applauded the Commission for adopting bold, new anti-slamming measures in its *Second Report and Order*.[2] Qwest warned, however, that these new rules must be given a chance to work before the Commission embraces more

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1 *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, CC Docket No. 94-129, *Further Notice of Proposed Rulemaking* (rel. Dec. 23, 1998) (*"FNPRM"*).

2 *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, CC Docket No. 94-129, *Second Report and Order* (rel. Dec. 23, 1998) (*"Second Report and Order"*).

restrictive measures, such as the ones proposed in its *FNPRM*.[3] After reviewing the comments filed by the other parties in this proceeding, we remain convinced of the correctness of our initial position. We also believe that, in addition to failing to show that more restrictive rules are needed, supporters of the Commission's proposals have failed to provide clear and compelling evidence that the *FNPRM*'s proposed new rules will, if adopted, effectively curtail incidents of slamming.

As explained in further detail below, there is no indication that the Commission's new slamming rules require additional reinforcement at this time. In the *Second Report and Order*, the Commission, among other things, absolved consumers of liability for calls made within 30 days of being slammed, and created a comprehensive and complex system of carrier payments designed to require unauthorized carriers to disgorge any profits they might otherwise gain from engaging in the practice of slamming.[4] Portions of the Commission's new slamming rules went into effect as recently as April 27, 1999, and its carrier liability provisions are scheduled to become effective only later this month. Until such time as these rules have been given an opportunity to work, and can be shown with some certainty to need reinforcement, the Commission should refrain from adopting further regulations.

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[3] *See* Comments of Qwest Communications Corporation (filed Mar. 18, 1999) ("Qwest").

[4] For reasons having to do with administrative efficiency and network limitations, Qwest and a number of other interexchange carriers are seeking a waiver of the Commission's carrier liability and compensation provisions, and instead propose implementing an independent, neutral third-party administrator to oversee all slamming disputes. Although the mechanics of this proposal differ from the mechanics of the Commission's new rules, both are alike in that the they will continue to make slamming an unprofitable practice.

Over the last two decades, the Commission has moved toward increasingly deregulating the long distance market. This movement has been inspired, in part, by the presence of competition. Deregulation has caused more carriers to want to enter the market, perpetuating a trend that provides for more choices and lower rates for all consumers. The competitiveness of the long distance market, however, has driven some carriers to engage in the illegal practice known as slamming in a misguided attempt to capture market share. This Commission addressed this problem in a measured and responsible way in its *Second Report and Order*.

It would be irresponsible for the Commission to now barrel headstrong into imposing additional regulations on carriers before assessing whether the ones it recently put in place are working. This is especially true where, as here, the Commission's proposed regulations would harm carriers more than they would help consumers. For instance, the *FNPRM* seeks comment on whether and how it should impose restrictions on the use of Internet-derived Letters of Agency ("LOAs"). As described more fully below, such restrictions are not necessary, and may in the end harm consumers and the Internet medium. The Internet can provide a safe and reliable method of signing-up new customers; it should not be encumbered by regulations that will discourage its use.

The *FNPRM*'s inquiry into whether three-way and automated verification calls should be subject to more restrictions should also be viewed with skepticism. The majority of commenters, including some state regulatory commissions, believe that these types of calls should continue to be used for verification purposes, and no commenters have proven otherwise. Similar proposals seeking to regulate the content of verification

scripts and impose punitive payments on unauthorized carriers are equally flawed and should be rejected.

Underlying a number of the *FNPRM*'s other proposals -- including its carrier identification code ("CIC") alternatives, and reporting and registration suggestions -- is the notion that both carriers and consumers alike would best be served if an independent, neutral third party administrator ("TPA") was established to oversee and effectuate all carrier changes and freezes. As explained in further detail below, such an entity would ensure that all carrier change requests are dealt with fairly and uniformly, and would help level the playing field between interexchange carriers ("IXCs") and incumbent local exchange carriers ("ILECs"), who often use their status as purveyors of the local exchange to manipulate and stymie the carrier change process.

The *Second Report and Order* reinforced the notion that certain rules and policies are needed to discourage incidents of slamming in the telecommunications marketplace. While this is important, it is just as important that the Commission employ measured discretion in its policymaking to preserve a harmonious balance between regulation and competition. The Commission should embrace this measured approach -- especially when it comes to competitive markets -- and adopt it in favor of the overly burdensome proposals contained in its *FNPRM*.

I. INTERNET LOAs SHOULD NOT BE REGULATED AT THIS TIME

Until now, the Commission's slamming rules did not contemplate the use of the Internet to effectuate preferred carrier changes and freezes. This is largely because the Internet has become ubiquitous only in the last few years. Like the reaction to many other new technologies that have revolutionized commerce, there is a tendency among

many to prophesize mayhem as the Internet enters consumer markets. Nowhere has this been more true than in the area of Internet LOAs. Significantly, there is not one shred of evidence, however, to suggest that permitting consumers to use the Internet to order carrier changes and freezes will in any way contribute to or exacerbate incidents of slamming. The Commission should therefore reject the views of those who wish to impose restrictions on the use of Internet, and should instead affirm that, until such time as the use of Internet LOAs is shown to be a problem, consumers can use them to make desired changes in their telecommunications service.

A. Regulation Will Threaten the Development, Use, and Improvement of Internet LOAs

The majority of commenters favor permitting the use of Internet LOAs to order and verify carrier change requests.[5] Many carriers also favor permitting the use of Internet LOAs to order and verify preferred carrier freezes.[6] Qwest agrees wholeheartedly with these commenters, as well as those who indicate that the success of the Internet can be largely attributed to the lack of regulation that the Commission and other government agencies have exercised over it.[7] As CompTel points out, electronic commerce between businesses is growing, and is projected to exceed $300 billion

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[5] *See, e.g.,* Comments of Cable & Wireless USA, Inc. (filed Mar. 18, 1999) ("Cable & Wireless) at 3-5; Comments of the Competitive Telecommunications Association/ America's Carriers Telecommunications Association (filed Mar. 18, 1999) ("CompTel") at 4-6; Comments of CoreComm Ltd. (filed Mar. 18, 1999) ("CoreComm") at 3.

[6] *See, e.g.,* Comments of RCN Telecommunications Services, Inc. (filed Mar. 18, 1999) ("RCN") at 2.

[7] Comments of Tel-Save.Com, Inc. (filed Mar. 18, 1999) ("Tel-Save.Com") at 2; *see also* CompTel at 3-4.

annually by the year 2002.[8] Moreover, Internet consultants predict that in 10 years, all business-to-business transactions and as many as 25% of all retail transactions will occur over the Internet.[9] These figures are, in part, the direct result of the federal government's hands-off policy toward the Internet.[10]

It would be tragic if telecommunications carriers were held back from fully capitalizing on the Internet's spectacular growth. The federal government has made considerable efforts to prevent this from occurring by encouraging its agencies to forebear from imposing regulations on the Internet. As Qwest noted in its initial comments, Chairman Kennard recently adopted this mandate when he promised that the Commission would not regulate the Internet while he is Chairman.[11]

On April 12, 1999, the United States Internet Council issued a report warning governments and regulatory agencies against levying restrictions on Internet commerce that, while at first glance appear to be narrowly tailored, may have an unforeseeable, devastating effect on the medium.[12]

> Based on history, we believe that any decision governments might make now about which technology should be advanced will certainly be fraught with unintended consequences. The growth of the medium will not be

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8 *Id.* at 4 (citing U.S. Dept. of Commerce, *The Emerging Digital Economy* at 21 (Apr. 1998)).

9 *Id.* (citations omitted).

10 *Id.*

11 "Remarks by Chairman William E. Kennard Before Legg Mason" (Mar. 11, 1999) (available at <http://www.fcc.gov/Speeches/Kennard/spwek910.html>).

12 *See* United States Internet Council, *State of the Internet: USIC's Report on Use & Threats in 1999* (Apr. 12, 1999) (available at <http://www.usic.org/usic_state_of_net99.htm>).

> helped in the long run by governmental policies that impose artificial distortions in the marketplace.
>
> We can see now only dim outlines of future technologies that may make major contributions to Internet access. Based on experience, we are likely to see others emerge in the near future that are not yet imagined. The wrong policy would be to stifle any avenue of new innovation by putting the power of government behind any one particular technology now known.[13]

As this excerpt suggests, the Commission should refrain from regulating Internet LOAs because the technology is not yet fully developed, and any restrictions may have a chilling effect on the future use of the Internet in the carrier change process.

Sprint notes that carriers may one day choose to verify LOAs submitted through the Internet through a "call me" button that customers could click on to indicate how and when they should be contacted to verify their change request.[14] Imposing restrictions on Internet LOAs at this early stage may arguably prevent innovations such as this from occurring, and will keep the carrier change process in the inefficient paper age while other types of commerce move forward.

B. Fears of Rampant Slamming in the Absence of Regulation for Internet LOAs are Unfounded

Many claim that Internet LOAs offer consumers less protection than other change procedures because Internet-requested carrier changes are implemented without the benefit of independent third party verification.[15] These commenters claim that, at a

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13 *Id.* at 2.

14 Comments of Sprint Corporation (filed Mar. 18, 1999) ("Sprint") at 9-10.

15 *See, e.g.,* Comments of PriceInteractive, Inc. (filed Mar. 18, 1999) ("PriceInteractive") at 17; Comments of TelTrust, Inc. (filed Mar. 18, 1999) ("TelTrust") at 13; Comments of the National Association of State Utility Consumer Advocates (filed

minimum, customers should be required to include some form of identifying information such as a credit card number, mother's maiden name, or social security number in their Internet LOA before a change is made.[16] Others suggest that nothing short of a separate, independent third party verification call will satisfy the Commission's carrier change requirements.[17] These concerns are greatly exaggerated and fail to perceive the new paradigm through which businesses that use the Internet must operate.

To begin with, Internet LOAs arguably offer consumers more, not less, protection than other, more conventional means of ordering service. While it is believed by some that telemarketing and third-party verification calls carry the risk that consumers will be bullied into signing-up for service, Internet LOAs do not share this characteristic. Instead, Internet LOAs conform to a *customer-initiated* and *customer-controlled* process. Consumers are given an opportunity to review a number of screens explaining the nature of a particular service before signing-up, and generally have the option of contacting the carrier via telephone or e-mail if they have any questions. The fact that consumers do not speak with a company representative before signing-up for service is therefore largely immaterial.

Mar. 18, 1999) ("NASUCA") at 12. Verification companies such as PriceInteractive and TelTrust likely support a third party confirmation requirement for Internet-generated change requests because an entirely online verification process threatens their revenue stream.

16 *See, e.g.,* Comments of the Telecommunications Resellers Association (filed Mar. 18, 1999) ("TRA") at 26-27; Comments of the Missouri Public Service Commission (filed Mar. 12, 1999) ("Missouri PSC") at 3; Comments of the Florida Public Service Commission (filed Mar. 10, 1999) ("Florida PSC") at 6; Comments of Frontier Corporation (filed Mar. 18, 1999) ("Frontier") at 7.

17 *See* NASUCA at 12.

Because the act of using an Internet LOA is customer-initiated and customer-controlled, there is also less of a need for third party confirmation, or other forms of confirmation such as credit card and social security numbers. The genius of the Internet is that it allows businesses to implement and execute a streamlined and efficient process without using the "off-line" world. Requiring carriers to separately verify customer change requests by matching credit card and social security numbers to a database would therefore diminish the benefits of using the Internet to begin with. Those who support requiring consumers to provide confirming information seem to overlook the fact that consumers are very concerned about privacy and may be reluctant to provide their credit card or social security numbers over the Internet. Requiring additional information for confirmation of Internet LOAs will therefore inject administrative inefficiencies into the process and shrink the pool of willing users.

The customer-initiated aspect of Internet LOAs make them strikingly similar to carrier change requests placed directly with local exchange carriers. Historically, customers have been able to change carriers without signing written LOAs or participating in third party verification calls by placing their request directly with the local exchange carrier. Part of the rationale behind this policy is that a customer who initiates a change request is not likely to have been duped or misled into doing so, and cannot view the change in service as having been effectuated without notice.[18] A

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18 The other rationale for this policy is today inapplicable. Historically, the ILECs, who execute carrier change requests through their local switches, generally have had little incentive to make the change incorrectly, as most did not compete in the market for long distance services. As more ILECs enter the market for intraLATA toll and interLATA service and the local exchange becomes increasingly competitive, however, this rationale

customer-initiated Internet LOA is like a customer-initiated call to the ILEC because it is done at the customer's discretion. Like a customer-initiated call to the ILEC, an Internet LOA is therefore self-confirming and should be permitted without being subject to a secondary and redundant "off-line" confirmation process.

All of this is not to say that some form of Commission guidance will never be needed for Internet LOAs. The Internet is constantly changing, and no one can accurately predict the impact it will have on carrier change requests or on the telecommunication market as a whole. The point is that it is simply too early in the development of the medium to begin imposing restrictions now, as the consequences of doing so are in no way foreseeable.

As explained above, maintaining a hands-off policy toward Internet LOAs does not leave consumers unprotected. The very nature of the Internet sign-up process itself provides protections that other, more traditional methods do not. Moreover, there is no indication that customers are being slammed through the Internet LOA process. The balance of equities therefore weighs in favor of letting the Internet run its course for now unfettered in this area, especially when no party has shown that there is a substantial risk of consumers being harmed.

C. Internet LOAs Do Not Require Actual, Written Signatures to be Valid

A number of commenters agree with the *FNPRM*'s tentative conclusion that electronic signatures used in Internet submissions of carrier change requests do not

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becomes less compelling, and, as described later in these reply comments, illustrates the need for an independent, third party administrator to facilitate the carrier change process.

comply with the signature requirement for LOAs, thereby rendering them invalid.[19] These commenters fail to recognize two things. First, that as explained above, carrier change requests submitted over the Internet are self-confirming and can therefore be considered more than mere LOAs. Second, that under existing law, electronic signatures are considered to be legal, valid writings.

As explained by CompTel, distinctions between paper submissions and electronic submissions are fast disappearing.[20] To date, at least fifteen states have enacted laws permitting the use of electronic signatures for most or all transactions, and many more are poised to do so in the near future.[21] The Commission itself subscribes to the validity of electronic signatures by permitting carriers to file documents through the Internet.[22] Tel-Save.Com notes that the Uniform Commercial Code considers a document "signed" by "any symbol executed or adopted by a party with present intention to authenticate a writing."[23] Clearly, an electronic signature is as valid a means of authenticating a document as any other method. The Commission should therefore not restrict the use of Internet LOAs on the grounds that the signature on the document is not penned in ink.

The purpose behind the Commission's signature requirement for paper LOAs is to minimize the likelihood of forgery in the carrier change process. Under conventional

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19 *See* TRA at 24; Comments of the Montana Public Service Commission (filed Mar. 18, 1999) ("Montana PSC") at 3; *see also FNPRM* at ¶ 171.

20 *See* CompTel at 7.

21 *Id.*

22 *Id.* at 8.

23 Tel-Save.Com at 10 (citing U.C.C. §1-201(39)).

wisdom, a carrier with a forged LOA is less likely to satisfy its burden of proof in a dispute because its LOA cannot be matched to the customer's real signature. Admittedly, this cannot be done with a typed LOA submitted over the Internet. Yet, the fact that the signature requirement did not cause incidents of slamming to be curtailed in the past suggests that it is not the lynchpin of customer security, as some commenters claim it to be. In light of the tremendous benefits and protections that accompany the use of Internet LOAs, there is little reason to permit the minor distinction between paper and Internet LOAs from hampering the widespread use of an otherwise efficient and consumer-friendly tool. Until such time as it is proven that Internet LOAs contribute to the slamming problem, there is no reason for the Commission to regulate them.

II. THE RECORD REFLECTS THAT THIRD-PARTY AND AUTOMATED VERIFICATION CALLS ARE VALID, AND THAT THE COMMISSION SHOULD NOT DICTATE THE CONTENT OF VERIFICATION SCRIPTS

Almost all of the parties that filed comments support the continued use by carriers of three-way calling and automated systems to accomplish independent third party verifications ("TPVs").[24] These commenters correctly recognize that three-way calling and automated TPVs are cost-efficient,[25] and are essential to the administration of

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[24] *See, e.g.,* Comments of Bell Atlantic (filed Mar. 18, 1999) ("Bell Atlantic") at 3-6; Cable & Wireless at 19; Comments of Excel Telecommunications, Inc. (filed Mar. 18, 1999) ("Excel") at 6; Comments of MCI WorldCom, Inc. (filed Mar. 18, 1999) ("MCI WorldCom") at 22; Comments of MediaOne Group, Inc. (filed Mar. 18, 1999) ("MediaOne") at 4-7.

[25] *See* Comments of VoiceLog LLC (filed Mar. 18, 1999) ("VoiceLog") at 3-4 (indicating that the use of automated TPVs can lower carrier costs by up to 75%); CompTel at 9; MediaOne at 4.

preferred carrier changes in a competitive marketplace.[26] Some of the commenters who generally favor preserving carrier flexibility, however, propose that the Commission add some limited restrictions to its verification rules to ensure that the verification process not become tainted, cause customer confusion, or go forward without the customer's express consent. These restrictions range from prohibiting carriers to remain on the line during a three-way verification call,[27] to standardizing the content of verification scripts,[28] to ensuring that customers can access a live operator during the automated verification process.[29]

Qwest submits that, for the most part, none of these limited restrictions are needed. As explained in our initial comments, a Qwest sales representative sometimes remains on the line after transferring a potential customer to a third party verifier in order to exchange information with the third party verifier *after* the verification process is complete and the customer has dropped off the line. At no time during the verification process does the Qwest representative speak, and if he or she were to do so, the third party verifier would, as expressly instructed by Qwest, terminate the verification call.[30] Any suggestion that carriers should be barred from remaining on the line during a third

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26 *See, e.g.,* Bell Atlantic at 3-6; Cable & Wireless at 19; Excel at 6; MCI WorldCom at 22; MediaOne at 4-7.

27 *See* Comments of BellSouth Telecommunications, Inc. (filed Mar. 18, 1999) ("BellSouth") at 2; Comments of the New York State Consumer Protection Board (filed Mar. 18, 1999) ("New York CPB") at 13; Comments of the New York State Department of Public Service (filed Mar. 18, 1999) ("New York PSC") at 6.

28 *See* Comments of SBC Communications, Inc. (filed Mar. 18, 1999) ("SBC") at 13.

29 *See* New York PSC at 5-6.

party verification call is therefore overly restrictive and misconstrues the purpose of the carrier's presence on the call to begin with.

Standardizing the content of verification scripts is also excessive in light of the existing verification guidelines that are apparent from the Commission's LOA requirements. The Commission's LOA rules specify precisely what information is required to validly confirm a preferred carrier change request on paper.[31] Carriers and third party verifiers are aware of these requirements and have tailored their verbal (*i.e.*, three-way calling and automated) verification scripts accordingly. Requiring carriers and third party verifiers to follow a specific script would detract from their ability to market and package their product in a unique manner. Denying them flexibility by dictating script requirements could also prevent new and innovative techniques -- which can save carriers both time and money -- from being implemented.[32]

Requiring a live operator to be available during the automated TPV process is also unnecessary in light of the many precautions carriers are required to take when signing-up new customers. The purpose of an automated TPV is to conform to the Commission's verification rules in a cost-efficient a manner.[33] Configuring automated systems with hot transfer capabilities will only serve to increase their costs.

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30 *See* Qwest at 12.

31 47 C.F.R. § 64.1150.

32 *See* PriceInteractive at 5 (describing the company's new voice-recognition automated verification system).

33 *See* VoiceLog at 3-4 (indicating that the use of automated TPVs can lower carrier costs by up to 75%).

Inexplicably, NASUCA opposes the use of automated TPVs on the grounds that a customer's assent can be "forged," and a customer may become "confused" by the automated mechanism.[34] Qwest finds it hard to believe that in an era of advanced communications capabilities, ubiquitous voicemail features, and broadband services, most customers will experience difficulties navigating the automated TPV process. Automated TPVs provide a reliable, convenient, and consumer-friendly means of verifying preferred carrier changes. Carriers have significant incentives to make sure that they are clear so that their customers can complete them. Consumers would be short-changed if, based on an inaccurate perception of their abilities, this alternative was removed from the Commission's rules.

III. A NEUTRAL THIRD PARTY ADMINISTRATOR FOR PREFERRED CARRIER CHANGES AND FREEZES IS VITAL TO A COMPETITIVE TELECOMMUNICATIONS MARKETPLACE

Not surprisingly, the question of whether a neutral, independent third party administrator is needed to implement preferred carrier changes and freezes is the subject of considerable debate between the ILECs and the competitive carrier community. As explained more fully below, Qwest submits that the ILECs' arguments opposing such an entity amount to nothing more than a thinly veiled attempt to perpetuate their monopolistic stronghold on the local telecommunications market and should be rejected.

Generally, the ILECs are quick to claim skepticism over any attempt to establish a neutral third party facilitator of preferred carrier changes and freezes.[35] These carriers

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34 *See* NASUCA at 10.

35 *See, e.g.,* Comments of Ameritech (filed Mar. 18, 1999) ("Ameritech") at 22; Comments of Cincinnati Bell Telephone Company (filed Mar. 18, 1999) ("Cincinnati

claim that such an entity is not needed because, among other things, "[t]here is absolutely no evidence that LECs . . . discriminate in their performance of [preferred carrier]-related duties."[36] As explained by MCI WorldCom, Cable & Wireless and others, however, the ILECs are able to use their status as purveyors of the local exchange to control and manipulate the carrier change process.[37] For example, AT&T shows that a number of ILECs have simply refused to implement carrier freeze requests, and that one in particular, the Southern New England Telephone Company, has thus far only allowed for freezes of its own long distance service.[38] Similarly, MCI WorldCom states that maintaining the status quo will only perpetuate the ability of the ILECs to control customer information relating to the processing of carrier changes and freezes.[39]

Qwest has itself recently experienced the abusive effect of the ILECs' exclusive control over the carrier change process. A number of Regional Bell Operating Companies ("RBOCs") have recently informed Qwest's billing and collection department that they will not require payments from customers who allege that they have been slammed. These RBOCs have implemented a new policy stating that if a customer claims that a slam occurred, that customer's account will be credited immediately, leaving it up to the Qwest to pursue further billing and collection action if it wants to get

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Bell") at 4; SBC at 17; Comments of US WEST Communications, Inc. (filed Mar. 18, 1999) ("US WEST") at 32-35.

36 *See, e.g.,* Ameritech at 23.

37 *See* MCI WorldCom at 2-4; Cable & Wireless at 24; Comments of AT&T Corp. (filed Mar. 18, 1999) ("AT&T") at 5-7.

38 AT&T at 6.

39 MCI WorldCom at 3-4.

paid for the services it rendered. According to the RBOCs, these policies apply irrespective of whether Qwest has a valid LOA or some other form of confirmation for the customer on file.[40] In many instances, Qwest is not even given an chance to produce the LOA, and is instead left to fend for itself after the customer has already been informed that his or her bill has been credited.

The fact that the ILECs have exclusive control over the preferred carrier change and freeze process permits them to implement such outrageous, discriminatory policies and practices. Moreover, as explained by a number of commenters, this problem will only get worse once the RBOCs are permitted to enter the long distance market.[41] The Commission needs to address this situation before it gets even more out of hand. In fact, significant reform in this area would also help bring carrier change charges closer to cost, thereby improving the ability of customers to change long distance and local carriers in a transparent and cost-efficient manner.[42]

A neutral, independent, third party administrator for preferred carrier changes and freezes would go a long way toward leveling the playing field for all carriers. AT&T's

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40 The RBOCs further make the outrageous claim that these policies are nothing more than the product of the Commission's new slamming rules. The fact is that while the Commission's *Second Report and Order* spends considerable time explaining the nature of the authorized carrier-to-unauthorized carrier relationship, it does not expressly contemplate the duties of the local exchange carrier, or the information flow between ILEC and IXC in the slamming context. This oversight has enabled the RBOCs to engage in considerable creativity in interpreting and implementing the Commission's new slamming rules, and is being used to validate their discriminatory practices.

41 *See, e.g.*, Frontier at 11; AT&T at 4.

42 As explained by MCI WorldCom, the ILECs charge extremely high, non-cost-based rates ($5.00) to effectuate a preferred carrier change. MCI WorldCom at 7.

comments provide considerable information about how such an entity would function, and should be used as a starting point for the process.[43] Because of the administrative and economic complexities involved in setting up a neutral third party administrator, however, the Commission should issue a separate Notice of Proposed Rulemaking to solicit further comment on how such an entity would function. It is especially important that this rulemaking be completed, however, before any RBOC is permitted to enter the long distance market.

Qwest is among a large group of telecommunications carriers that has proposed to establish a neutral third party administrator to handle all slamming-related complaints. The proponents of this third party entity have begun to meet regularly with the RBOCs, the Commission, consumer groups, and other regulatory agencies to ensure that a workable solution to the slamming problem emerges. Any effort to establish a neutral third party administrator to effectuate preferred carrier changes and freezes could draw upon this experience, making the transition from an ILEC-dominated era to one where control over the carrier change process is distributed more evenly smooth and efficient.

BellSouth's recent reduction in this rate to $1.65 indicates how excessive the $5.00 rate is. *Id.*

[43] *See* AT&T at 15-30 (describing the white paper drafted by Lockheed Martin, a potential third party administrator of the preferred carrier change and freeze process); *see also* MCI WorldCom at 8-13; Sprint at 13.

IV. EACH OF THE COMMISSION'S CIC CODE PROPOSALS IS FLAWED

Not surprisingly, nearly every party that commented on the Commission's CIC code proposals supported the option that would cost it the least.[44] Like AT&T, CompTel, MCI WorldCom and others, Qwest believes that each of the Commission's alternatives is equally flawed, and that, as described above, consumers would be better served with a neutral third party administrator to handle all carrier change requests and freezes.[45] Qwest reviewed each of the Commission's CIC code alternatives and identified their flaws in its initial comments.[46] We will not repeat that discussion here. When viewed in the aggregate, the wide disparity in recommended approaches suggests that none of the alternatives is optimal, and that the Commission should continue to explore other methods of resolving reseller-specific slamming problems. Qwest continues to believe that the best option would be to establish a TPA to closely monitor and effectuate all preferred carrier changes and freezes.

V. PENALTY PAYMENTS ARE NOT WARRANTED AT THIS TIME

Qwest agrees with Cable & Wireless and MediaOne that before requiring unauthorized carriers to pay punitive fines for their offenses,[47] the Commission should

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44 *See, e.g.,* Bell Atlantic at 2 (arguing that resellers should be responsible for obtaining their own CICs); BellSouth at 1-2 (same); Ameritech at 6 (arguing that IXCs should have to modify their systems to accommodate reseller freezes); Cincinnati Bell at 3 (stating that regardless of which solution is adopted, resellers should have to bear the costs).

45 *See* AT&T at 40; CompTel at 13; MCI WorldCom at 19.

46 *See* Qwest at 6-11.

47 In an effort to maintain "a strong deterrent effect against slamming," the *FNPRM* proposes to require slammers to, in addition to disgorging any unlawful gains, pay

evaluate the effectiveness of its recently modified slamming rules to determine whether newer and more extreme measures designed to combat slamming are needed.[48] Most of the rule modifications that accompanied the Commission's *Second Report and Order* became effective only as recently as last week. The rest of the new rules are not scheduled to go into effect until later this month.[49] Fortifying these new rules without first assessing their existing effectiveness may impose additional regulatory and administrative burdens on legitimate carriers that are not necessary.

As indicated by AT&T and TRA, the Commission's proposal to require unauthorized carriers to pay punitive fines will also exacerbate the flaws in the Commission's dispute resolution and carrier liability provisions. Under these new rules, the allegedly authorized carrier is in charge of determining whether a slam took place. This approach improperly provides the allegedly authorized carrier with the incentive to find that the customer was slammed, as doing so will enable it to recover revenues from its competitor, the alleged slammer.[50] As AT&T and TRA point out, the *FNPRM's* proposal will exacerbate this problem by making the reward for finding a slam even

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punitive fines for their offenses. *FNPRM* at ¶ 140. Where a subscriber has paid charges to an unauthorized carriers, the *FNPRM* proposes that the authorized carrier be allowed to collect from the authorized carrier double the amount of charges paid by the subscriber during the first 30 days after the unauthorized change. *Id.* at ¶ 141. In situations where the subscriber has not paid charges to an unauthorized carrier, the *FNPRM* proposes to permit the authorized carrier to collect from the unauthorized carrier the amount that would have been billed to the subscriber during the first 30 days after the unauthorized change had the slam not occurred. *Id.*

48 Cable & Wireless at 18; MediaOne at 10.

49 Sections 64.1100(c), 64.1100(d), 64.1170 and 64.1180 are scheduled to become effective on May 17, 1999.

50 AT&T at 31; TRA at 19.

greater and more enticing.[51] The *FNPRM*'s punitive remedies provision will therefore harm the equitable and efficient administration of the new preferred carrier change rules and should not be implemented.

Qwest also agrees with GTE that imposing additional penalties on unauthorized carriers may do little to truly solve the slamming problem because those who slam tend to go to extreme measures to avoid having to pay penalties.[52] The *FNPRM*'s proposed new penalties would therefore only add to the hefty burden borne by legitimate carriers under the Commission's new slamming rules, and would do little to alleviate the many slams caused by rogue carriers.

The primary supporters of the *FNPRM*'s punitive remedy proposal are the state regulatory commissions.[53] This is understandable. These commissions often find themselves on the receiving end of consumer ire, and have a tremendous incentive and a legal duty to reduce incidents of slamming. The zeal of these commissions to stop slamming at all costs, however, should not be a substitute for measured discretion in the rulemaking process. This Commission has established and implemented revisions to its slamming rules. They should be given a chance to work before additional or alternative remedies are embraced.

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51 *Id.*

52 Comments of GTE Service Corporation (filed Mar. 18, 1999) ("GTE") at 3.

VI. THE PROPOSED REPORTING AND REGISTRATION REQUIREMENTS ARE FLAWED AND UNNEEDED

Although intended to assist regulators in identifying and ferreting out carriers who repeatedly initiate unauthorized changes, the *FNPRM*'s proposals to implement reporting and registration requirements are flawed and are far too burdensome vis-à-vis the minor benefits they will create.

A. Reporting Requirement

Qwest agrees with the majority of commenters that requiring carriers to submit a report containing the number of slamming complaints they receive in a given period[54] would be extremely misleading, and would do little to minimize incidents of slamming.[55] To begin with, requiring carriers to submit reports containing mere allegations, rather than confirmed incidents of unauthorized changes, would not provide the Commission with a clear picture of the slamming problem.[56] Most customers are not experts in telecommunications terminology and may claim that they have been slammed when, in fact, they are merely contesting a billing mistake or trying to correct some other benign error. Others may allege an unauthorized change, only to be reminded that they, or persons authorized to act on their behalf, validly switched carriers at an earlier point in time.

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53 *See* Missouri PSC at 1-2; Montana PSC at 1-2; New York PSC at 3-4.

54 *FNPRM* at ¶ 179.

55 *See, e.g.*, AT&T at 44-45; Bell Atlantic at 7-8; TRA at 26.

56 Cable & Wireless at 22-23; TRA at 26.

Reports of slamming allegations would also be skewed by customers who game the Commission's new slamming rules. These customers, who will allege they have been slammed in an effort to receive a credit or free service, would increase the number of complaints received by many carriers, making the information provided to the Commission both misleading and unhelpful. Unscrupulous carriers would also distort the reporting process, as they would not likely submit honest reports.[57]

Even if the Commission corrected some of these problems and required carriers to submit reports of actual slams, incidents of slamming would not disappear and would probably not even diminish. Absent compelling evidence as to the efficacy of slamming reports, the Commission should therefore not adopt a reporting requirement.[58]

B. Registration Requirement

Many of the same reasons that make the *FNPRM*'s reporting requirement a bad idea also apply to the proposal to require carriers to register with the Commission.[59] As indicated by a number of commenters, requiring carriers to register prior to providing services to end users would not likely accomplish the Commission's goal of reducing incidents of slamming. Instead, this requirement would simply create more

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57 AT&T at 44.

58 Excel at 7. Of course, a neutral and independent TPA would, as part of its duties, provide accurate reports that would help regulatory identify perpetual slammers, and afford legitimate carriers an opportunity to focus their resources on providing good customer service and other business efforts.

59 *FNPRM* at ¶ 180.

administrative costs for carriers and would burden them far more than it would help consumers.[60]

As indicated by CompTel, carriers are already required to provide significant information to the Commission, including designating an agent in the District of Columbia "on whom service of all notices, process, orders, decisions and requirements of the Commission" can be made.[61] There is no reason to add yet another registration requirement if its purpose will not be effective and clear.

Qwest suspects that many carriers did not vigorously oppose the *FNPRM*'s registration proposal because, if required, they could comply with it rather easily. While that may be true, this type of thinking overlooks the fact these same carriers could also be expending their resources on combating slamming in more effective ways. Nonetheless, if the Commission insists on requiring carriers to register before they provide service to consumers, carriers should be given an opportunity to correct any deficiencies or mistakes in their registration statements before any enforcement action is taken. Facilities-based carriers should also not be held responsible for any registration failures or inaccuracies submitted by their reseller customers.

In light of the ongoing deregulatory tact the Commission has taken with respect to today's competitive long distance telecommunications marketplace, the last thing the Commission should do is create a new and costly requirements that are not likely to

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60 *See, e.g.*, AT&T at 46; Bell Atlantic at 8; Cable & Wireless at 23.

61 CompTel at 15 (citing 47 C.F.R. § 1.47(h)).

create substantial benefits for regulators or consumers.[62] If complete and accurate data on carriers and incidents of unauthorized changes is sought, then, as Sprint suggests, the Commission should establish a TPA to, in addition to effectuating carrier changes, process and distribute data concerning slams.[63] This would fulfill the needs of regulatory commissions and consumer groups by providing timely information on slamming,[64] and would generate reports in a competitively neutral manner.

VII. THE TERM "SUBSCRIBER" SHOULD BE DEFINED BROADLY

Qwest agrees with the majority of commenters who argue that the Commission should define the term "subscriber" broadly so that carriers can sign-up customers quickly and efficiently.[65] Like these commenters, however, Qwest is concerned that by relying on the representations of its potential customers, carriers can run afoul of the Commission's slamming rules.[66]

Even if they take the time to ask, carriers can never really *know* whether the person they are signing-up for service is in fact authorized to make this decision.[67] For this reason, the Commission should adopt a definition for the term "subscriber" that is as flexible as possible; it should not shift to carriers the burden of determining whether their

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62 *See* CoreComm at 6-7; RCN at 6.

63 *See* Sprint at 11.

64 *See, e.g.,* NASUCA at 13.

65 *See, e.g.,* Cincinnati Bell at 3; GTE at 12; SBC at 14.

66 *See, e.g.,* Cable & Wireless at 20-21; Frontier at 8; TRA at 22-23.

67 *See* Ameritech at 16-17.

customers are telling the truth.[68] Instead, the Commission's rules should clearly state that carriers who exercise reasonable care in inquiring as to a customer's identity have met their obligation and are therefore insulated from a slamming claim by that customer.

Limiting the term "subscriber" to the person whose name appears on the bill, as some commenters suggest,[69] would be far too restrictive, and would unduly interfere with the ability of customers to change carriers in a comfortable manner. In keeping with the competitive and flexible nature of the long distance market, customers should be able to make decisions about their preferred carrier, delegate that authority if needed, and act on those decisions without undergoing an elaborate and excessive testing and screening process.

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68 *See* Frontier at 8; MCI WorldCom at 24.

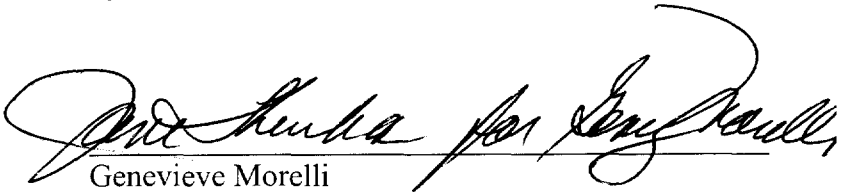
69 *See, e.g.,* Comments of GVNW Consulting, Inc. (filed Mar. 18, 1999) at 25; Missouri PSC at 3; New York CPB at 21.

CONCLUSION

For the reasons stated above, the Commission should avoid adopting any new regulations, and should address the issues contained in its *FNPRM* consistent with the approach described in these reply comments.

Respectfully submitted,

QWEST COMMUNICATIONS CORPORATION



Genevieve Morelli
Senior Vice President of Government Affairs and Senior Associate General Counsel
Qwest Communications Corporation
4250 North Fairfax Drive
Arlington, VA 22203
(703) 363-0220

Jane Kunka
Manager, Public Policy – Government Affairs
Qwest Communications Corporation
4250 North Fairfax Drive
Arlington, VA 22203
(703) 363-0220

May 3, 1999

CERTIFICATE OF SERVICE

I, Patricia Grondin, hereby certify that on this third day of May, 1999, a copy of the foregoing Reply Comments of Qwest Communications Corporation was served on the parties listed below via hand delivery (indicated by "*") or first-class mail, postage pre-paid.

Patricia Grondin

Chairman William Kennard*
Federal Communications Commission
The Portals
445 12th St., SW, 8-B201
Washington, DC 20554

Commissioner Gloria Tristani*
Federal Communications Commission
The Portals
445 12th St., SW, 8-C302
Washington, DC 20554

Commissioner Susan Ness*
Federal Communications Commission
The Portals
445 12th St., SW, 8-B115
Washington, DC 20554

Magalie Roman Salas, Esq.*
Secretary, Federal Communications Commission
The Portals
445 12th St., SW, TWA-325
Washington, DC 20554

Commissioner Michael Powell*
Federal Communications Commission
The Portals
445 12th St., SW, 8-A204
Washington, DC 20554

Dorothy Attwood, Chief*
Enforcement Division
Common Carrier Bureau
The Portals
445 12th St., SW, Room 5-A865
Washington, DC 20554

Commissioner Harold Furchtgott-Roth*
Federal Communications Commission
The Portals
445 12th St., SW, 8-A302
Washington, DC 20554

Glenn Reynolds, Deputy Chief*
Enforcement Division
Common Carrier Bureau
The Portals
445 12th St., SW, Room 5-A865
Washington, DC 20554

Michael J. Travesio
Maryland People's Counsel
6 Saint Paul Street, Suite 2102
Baltimore, MD 21202

Dana K. Joyce
Lera L. Shemwell
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Lawrence G. Malone
Cheryl L. Callahan
Elaine H. Bartley
Public Service Commission of the State of New York
Three Empire State Plaza
Albany, NY 12223-1350

Timothy S. Carey
Ann Kutter
Michael P. Sasso
Anne F. Curtin
New York State Consumer Protection Board
Suite 2101
5 Empire State Plaza
Albany, New York 12223-1556

Cynthia B. Miller
Florida Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Robin McHugh
Montana Public Service Commission
P.O. Box 202601
Helena, MT 59620-2601

Carol Ann Bischoff
Competitive Telecommunications Association/ACTA
1900 M St., NW, Suite 800
Washington, DC 20036

Danny E. Adams
Steven A. Augustino
Peter A. Batacan
Kelley, Drye & Warren, LLP
1200 19th St., NW, Suite 500
Washington, DC 20036

Mark C. Rosenblum
Peter H. Jacoby
AT&T Corp. 295 North Maple Ave.
Basking Ridge, NJ 07920

Joseph R. Guerra
Rudolph M. Kammerer
Sidley & Austin
1722 Eye Street, NW
Washington, DC 20006

Mary L. Brown
MCI Worldcom, Inc.
1801 Pennsylvania Ave., NW
Washington, DC 20006

Leon M. Kastenbaum
Michael B. Fingerhut
Norina T. Moy
1850 M. St., NW, Suite 1110
Washington, DC 20036

Aloysius T. Lawn, IV
Tel-Save.com, Inc.
6805 Route 202
New Hope, PA 18938

Richard M. Firestone
Paul S. Feira
Nicholas I. Poirritt
Arnold & Porter
555 Twelfth Street, NW
Washington, DC 20004-1202

Rachel J. Rothstein
Paul W. Kenefick
Jonathan Session
Cable & Wireless USA, Inc.
8219 Leesburg Pike
Vienna, VA 22182

Susan M. Eid
Tina S. Pyle
Richard A. Karre
MediaOne Group, Inc.
1919 Pennsylvania Ave., N.W.
Suite 610
Washington, D.C. 20006

Joseph Kahl
RCN Telecom Services, Inc.
105 Carnegie Center
Princeton, NJ 08540

Marcy Greene
Michael Donahue
Swidler, Berlin, Shereff, Friedman, LLP
3000 K St., NW, Suite 300
Washington, DC 20007

Michael J. Shortley, III
Frontier Corp.
180 South Clinton Avenue
Rochester, NY 14646

James A. Smith
Excel Telecommunications, Inc.
1133 Connecticut Ave., NW, Suite 750
Washington, DC 20036

Gary L. Mann
IXC Long Distance, Inc.
98 San Jacinto Boulevard, Suite 700
Austin, TX 78701

Charles C. Hunter
Catherine M. Hannan
Hunter Communications Law Group
1620 I Street, NW, Suite 701
Washington, DC 20006

Barry Pineles
GST Telecom, Inc.
4001 Main Street
Vancouver, WA 98663

Pamela Arluk
Marcy Greene
Swidler, Berlin, Shereff, Friedman, LLP
3000 K St., NW, Suite 300
Washington, DC 20007

Gary Phillips
Ameritech
1401 H Street, NW, Suite 1020
Washington, DC 20005

Kathryn Marie Krause
US West Communications, Inc.
Suite 700
1020 19th Street., NW
Washington, DC 20036

Robert M. Lynch
Roger K. Toppins
Barbara R. Hunt
SBC Communications, Inc.
One Bell Plaza, Room 3026
Dallas, TX 75202

John F. Raposa
GTE Service Corporation
600 Hidden Ridge, HQE03J27
P.O. Box 152092
Irving, TX 75015-2092

Andre J. Lachance
GTE Service Corporation
1850 M Street, N.W.
Washington, D.C. 20036

M. Robert Sutherland
Richard M. Sbaratta
Helen A. Shockey
BellSouth Corporation
Suite 1700
1155 Peachtree Street., NE
Atlanta, GA 30306-3610

Lawrence W. Katz
Michael E. Glover
James G. Pachulski
Bell Atlantic
1320 N. Courthouse Road
8th Floor
Arlington, VA 22201

Christopher J. Wilson
Cincinnati Bell Telephone Company
201 East Fourth Street, Room 102-610
Cincinnati, OH 45201

Neil S. Ende
Steven D. Hitchcock
Technology Law Group, LLC
5335 Wisconsin Ave., NW, Suite 440
Washington, DC 20015

Steven P. Goldman
Teltrust, Inc.
6322 South 3000 East
Salt Lake City, Utah 84121

Leonard J. Kennedy
Loretta J. Garcia
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Ave., NW
Washington, DC 20036

Kenneth T. Burchett
GVNW Consulting, Inc.
8050 S.W. Warm Springs
Tualatin, OR 97062

James Veilleux
VoiceLog, LLC
9509 Hanover South Trail
Charlotte, NC 28210

Ms. Kimberly Parker
Common Carrier Bureau
Federal Communications Commission
445 12th St., SW
Room 5-C827
Washington, DC 20554

International Transcription Service*
Federal Communications Commission
1231 20th St., NW
Washington, DC 20554